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STRATEGIES FOR CRIME PREVENTION AND CONTROL, PARTICULARLY IN URBAN AREAS AND IN THE CONTEXT OF PUBLIC SECURITY

MEASURES TO PREVENT TRAFFICKING IN CHILDREN

Report of the Secretary-General

Summary

Further to the report of the Secretary-General, submitted to the Commission on Crime Prevention and Criminal Justice at its fifth session, on children as victims and perpetrators of crime (E/CN.15/1996/10), the present report provides an overview of additional information received from Governments concerning the elaboration of an international convention against trafficking in children, and outlines their suggestions on possible elements to be included therein. In addition, the report contains the results of a survey, on the basis of existing international conventions, analysing the extent to which children are protected from becoming victims of international trafficking, taking into account both substantive and procedural aspects of providing such protection. The analysis also draws on the work accomplished by the working group of the Commission on Human Rights on the question of a draft optional protocol on the sale of children, child prostitution and child pornography, as well as basic measures needed for their eradication.

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INTRODUCTION

1. The present report has been prepared in pursuance of Economic and Social Council resolution 1996/26 on measures to prevent international trafficking in children and to establish penalties appropriate to such offences. In that resolution, the Council requested the Secretary-General to continue to gather the opinions of Governments on the elaboration of an international convention or conventions on trafficking in children, and their suggestions on possible elements to be included therein. The Council also invited interested Governments to collect data and other information on the problem in accordance with national legislation, and to furnish that information to the Commission on Crime Prevention and Criminal Justice.

2. In the same resolution, the Secretary-General was requested to conduct a survey, on the basis of existing international conventions, analysing the extent to which children are protected from becoming victims of international trafficking, taking into account both substantive and procedural aspects of providing such protection, and to compile and analyse the data collected from Member States.

3. It is recalled that the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 7,* and the Council, in its resolution 1995/27, requested the initiation of the process of seeking the views of Member States on the elaboration of an international convention on trafficking in children.

4. Accordingly, the present report contains additional information received from Member States that was not reflected in a previous report of the Secretary-General on this issue (E/CN.15/1996/10, paras. 10-26 and 46). It also contains the results of a survey analysing the extent to which children are protected by international conventions from becoming victims of child trafficking, regardless of the reason for such trafficking.

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*See *Report of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cairo*, 29 April-8 May 1995 (A/CONF. 169/16/Rev.1, chap. I). The report will subsequently be issued as a United Nations sales publication.

I. VIEWS OF MEMBER STATES

5. The previous report of the Secretary-General on this issue (see paragraph 4 above) covered replies from the following 18 States: Argentina, Australia, Austria, Cuba, Estonia, Germany, Guatemala, Holy See, Japan, Jordan, Luxembourg, Norway, Panama, Poland, Qatar, Slovenia, Tunisia and Turkey.

6. All States, except Japan, in principle, favoured the elaboration of such a convention, provided that the results achieved by the inter-sessional open-ended working group of the Commission on Human Rights for the elaboration of a draft optional protocol to the Convention on the Rights of the Child (General Assembly resolution 44/25, annex) on the sale of children, child prostitution and child pornography would be adequately taken into account, as well as other pertinent international conventions. Japan raised some issues of concern regarding possible overlap with other relevant international instruments. Some States explained the reasons for their views in detail, and made concrete suggestions on the possible content of such a convention.

7. In the meantime, additional replies have been received from the following 23 States: Argentina, Austria, Chad, Chile, Cuba, Cyprus, Finland, Greece, Guatemala, Iceland, Israel, Italy, Kuwait, Mexico, New Zealand, Niger, Norway, Panama, Philippines, Poland, Slovenia, Spain and Syrian Arab Republic.

8. Argentina reported that according to provisional findings of a criminological study of international trafficking in children conducted in Argentina, in about 17.4 per cent of cases of adoption, irregularities were detected which gave grounds for strong suspicions of international trafficking in children. The methodology used for this study expressly excluded cases of trafficking in children by means other than those masked by the "legal" adoption proceedings, such as alteration of identity, falsification of paternity, abduction and illicit removal of children, partly because of the high level of unreported offences associated with this type of criminal activity, which leads to the inference that the number of cases is even greater. It should also be noted that the study was supplemented by information from the immigration authorities of the core countries regarding foreign children adopted by their citizens and figures relating to married couples who are of the same original nationality as those children and were in a position to adopt. Analysis of these figures revealed a larger number of adoptions by foreigners compared with adoptions by nationals of the same nationality as the child, with steady local demand, which indicated that these cases should be examined further from the viewpoint of suspected international trafficking in children. The Immigration and Naturalization Service of the United States of America has reported,[1] according to the Inter-American Institute for Children in its *Bulletin 232* of 1989, that between 1979 and 1989, 21,591 children migrated from the Latin American region to the United States, while 4,890 children went to Sweden* and 1,539 to Norway.** This clearly indicated that the existence of international trafficking in children did not in any way point to a crisis in the institution of international adoption, but, on the contrary, highlighted the need to protect it from those who would use it for covert purposes. Another study was being conducted on the migration from Argentina of children under three years of age, the aim being to supplement the information provided by the above-mentioned criminological study.

9. Austria, in an additional reply, stated that it is necessary to improve legal assistance and cooperation among States to prosecute offenders, and that cooperation with home and destination countries of sex offenders need to be improved. The Government felt that children are protected against becoming victims of international trafficking. However, Austria supported the elaboration of a convention against trafficking in children, provided that other countries, particularly those affected by this phenomenon, endorsed such an initiative.

10. Chad subscribed to the idea of elaborating a convention on the trafficking in children.

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*Preliminary figures compiled by Statens Nämnd för Internationella Adoptionsfrågor, Stockholm.

**Based on data compiled by Adopsjonsform, Oslo.

11. Chile supported the elaboration of an international convention on the trafficking in children, which could include the necessary elements to fight international organized crime. There was a need for international legislation aimed at prevention of such an act and establishing penalties for it, while also generating legal mechanisms between States designed to establish operative procedures for rendering the adopted norms effective. With regard to the existing legislation in Chile, trafficking in children was not currently defined as an offence. The Penal Code established penalties for other actions that might be linked to this activity, and which could constitute acts preparatory to the sale of children or facilitating such sale. A bill was before parliament which, if adopted, would establish a set of standards aimed at preventing and establishing penalties for, the sale of and trafficking in children.

12. Cuba, in an additional note to the Secretary-General, reiterated its support for the elaboration of a convention against trafficking in children, noting that in view of the high priority that the Government placed on the well-being of children, it was actively involved in the elaboration of an optional protocol on the sale of children, child prostitution and child pornography.

13. The Government of Cyprus informed the Secretary-General that in its territory, children were not victims of trafficking. Currently, Cyprus was not in a position to make any suggestions as to what matters should be included in a convention against trafficking in children. At the national level, cases of trafficking in children were dealt with in accordance with the provisions of the criminal law.

14. In the view of Finland, trafficking in children was one of the most striking examples of violence against children and was closely connected with organized transnational crime. Trafficking in children required international cooperation. Finland suggested that, before a convention was elaborated, the Commission on Human Rights should consider whether international conventions on the prohibition of slavery could be applied to the prevention of trafficking in children, while the Commission on Crime Prevention and Criminal Justice, in cooperation with the Commission on Human Rights, should examine the measures that States could take on the basis of existing conventions in order to prevent trafficking in children. The Finnish authorities did not receive any information on cases concerning trafficking in children from Finland or to Finland. This kind of activity would, however, be punished according to the Finnish Penal Code.

15. Greece was of the view that trafficking in children, as a part of trans-border organized crime, was growing at a fast pace, and that it constituted a significant threat for the whole world, calling for a joint response, especially if such activities threatened the lives of young persons and embroiled them in crimes. While Greece had not so far been concerned with cases that had taken on the form of organized crime, in certain cases there were signs of compelling circumstantial evidence pointing to organized trans-border criminal activity. As organized crime, particularly that associated with minors, was increasing, solutions were required that should be based on bilateral as well as multilateral cooperation between States. Greece was therefore of the view that an international convention on the illegal trade in children and on the combating of forms of international organized crime committed by minors or against minors would greatly contribute both to the prevention and to the suppression of such modes of criminal activity.

16. Guatemala supported the elaboration of a convention. It should provide States with a valuable juridical tool to implement international policies to fight this form of crime. The Government was of the view that any convention on this subject should at least fulfil the following requirements:

(a) Define the offence, describing the ingredients constituting it as well as the offences of attempted trafficking in children, aiding and abetting and conspiracy;

(b) Establish that the contracting parties should undertake to pass or enact laws to ensure the effective implementation of the provisions of the convention, and that States should establish penal sanctions for the punishment of offenders in conformity with their constitution;

(c) Provide for the extradition of persons charged with international trafficking in children and, in cases where extradition is not admissible under the provisions of their constitution, it should stipulate that States shall undertake, through the competent courts, to prosecute in their own territory persons charged with such offences;

(d) Further provide that acts constituting the offence should be brought to the attention of an international criminal court whose jurisdiction is recognized by the parties.

17. The Government of Iceland stated that no case had occurred in its territory where children had been abducted for sale. However, the Government was fully aware that trafficking in children was a problem of transnational organized crime that needed to be tackled at the international level. The Government therefore supported the elaboration of an international convention against trafficking in children, which could at the same time give some guidelines for national legislators on necessary methods and measures to address this problem at the national level.

18. Israel viewed with favour the elaboration of an international convention on trafficking in children that would encompass stronger enforcement mechanisms than those included in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (General Assembly resolution 317 (IV), annex). An updated convention on this subject should also refer to trafficking in infants and small children being offered for adoption, and should include appropriate enforcement mechanisms in this area.

19. The Government of Italy shared the opinion that the elaboration of an international convention to fight organized criminal activities involving trafficking in children might prove useful and perhaps necessary. A distinction should be drawn between the so-called irregular adoptions, on one hand, and the much more serious issue of trafficking in children for immoral purposes (such as prostitution and other forms of sexual exploitation), on the other hand. Italy had already devoted special attention to these problems, and had given its full assistance to all interested countries in order to set precise rules for adoption. It had also endeavoured to deal with issues that were only marginal in Italy. There had never been any evidence of trafficking in children for the purpose of trading organs.

20. Kuwait was of the view that the word "illicit" was redundant, because it implied that there was a licit and an illicit trafficking in children, while both had long been prohibited by international law. Kuwait pointed out that in the Slavery Convention signed at Geneva on 25 September 1926, article 1, paragraph 2, the slave trade was defined as including all acts involved in the capture, acquisition or disposal of a person with intent to reduce him or her to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging; and, in general, every act of trade or transport in slaves. In this context, Kuwait shared the opinion that the promulgation of a convention on trafficking in children would be useless, and would disperse international efforts to promote the Convention on the Rights of the Child, which had comprehensive provisions on all aspects of protection for and the rights of the child, first and foremost the prohibition of all types and forms of exploitation of or trafficking in children, as explained above in the context of reviewing certain articles of the Convention. Kuwait believed that intensified efforts should be made toward establishing the safeguard of an international criminal court having the competence of prosecution, trial and punishment in cases where the provisions of the Convention on the Rights of the Child, on the matter under consideration, were violated. Perhaps the international criminal court to be established under General Assembly resolution 50/46 was the best authority that could be entrusted with the mandate of considering such crimes, particularly in view of the proposal, supported by several States, to include in the statute of the Court a provision allowing a regular review

of the list of crimes within the competence of the Court in order to cope with the needs of the international community.

21. Mexico advocated the elaboration of a convention, since such an international instrument would strengthen the current legal provisions and national administrative rules applicable to the prevention and punishment of trafficking in children, bearing in mind the work of the inter-sessional open-ended working group of the Commission on Human Rights for the elaboration of a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in order to avoid duplication of functions and international instruments on this subject. The following are some of the features that should be embodied in the text of any international convention on trafficking in children:

(a) The convention should have a preamble or introduction that reaffirms the commitments assumed by the States parties in controlling international trafficking in children; a definition and an indication of the scope of application and the rights that are protected; a statement of the duties of the States parties and the criminal aspects; and general provisions and procedures for the exchange of information on the matter;

(b) Considering that the illegal trade in children and the sexual abuse of children very often have their origin within the family, it is advisable, internationally, to give full recognition to the legal validity of the accusations made by children who are the victims of sexual offences, without the need for acknowledgement by the guardian, as is currently the case;

(c) There should be increased punishments for the perpetrators of such offences, to safeguard the interests of the victim.

22. New Zealand was of the view that further consideration should be given to the elaboration of a convention on trafficking in children, and supported the initiative to gather data to determine both the scope of the problem globally and the main areas of criminal activity. While the trafficking in children was not a domestic problem, New Zealand was aware that it was a major international issue and would support any appropriate initiatives to end trafficking in children worldwide. To this end, it was important that any activities should be closely coordinated with the inter-sessional open-ended working group of the Commission on Human Rights for the elaboration of a draft optional protocol to the Convention on the Rights of the Child. The issues that it was important to cover in any proposed convention were as follows:

(a) The scope of the convention should be wide enough to include all those who participate in the activity, including those who instigate and abet such activity;

(b) The convention should make provision for the cooperation of enforcement authorities and for extradition where appropriate. To ensure the effectiveness of the convention, there should be provisions to encourage the maximum cooperation between enforcement authorities in different jurisdictions, given that the offence involved is often a transnational crime;

(c) The needs of the children involved should be recognized and addressed within the framework of the convention as far as possible. In this context, it is important to recognize linkages with other relevant conventions. The 1961 Hague Convention on the Protection of Minors, which is currently being revised, may have some applicability, outside the criminal context, when the issue of the future of the child is being considered. It is also important to link the convention specifically to the principles set forth in the Convention on the Rights of the Child, and to ensure that any measures called for in future are consistent with the latter Convention;

(d) The focus of the convention should be trafficking in children regardless of its purpose. Although most trafficking in children currently appears to be for the purpose of prostitution, child labour or commercial adoption, situations that do not relate to these particular activities may now exist or may arise in the future.

23. Niger was not officially aware of cases of trafficking in children. However, rare cases of certain enslaving practices still occurred, especially in the region of Tahoua, which were incompatible with international treaties to which Niger is a signatory. In this regard, the Government intended to raise awareness through seminars and to harmonize the national legislation with the Convention on the Rights of the Child. The competent authorities of Niger envisaged the creation of an institutional framework to assist in the full application of the Convention and the creation of a commission involving, on an equal basis, all the national structures concerned with this question, the goal of which would be to define new directions to combat all problems children had to face as victims.

24. Norway, in support of the elaboration of a convention, stated that such a convention should go beyond existing international conventions relevant to trafficking in children. Such an offence was usually an economically motivated crime. Because of the organized and transnational aspects of trafficking in children, it was necessary to combat the problem with effective international cooperation involving police.

25. Panama, in a further note to the Secretary-General, reiterated its support for the elaboration of a convention, and specified further elements and concerns that should be taken into account and reflected therein, including the following:

(a) The commitment or obligation of States to revise their national legislations and procedural and penal regulations to permit the criminal prosecution of offences classified generically as trafficking in children;

(b) As part of the endeavour referred to in paragraph (a) above, States should harmonize their legislations regarding the establishment of the criminal offence in such a way as to identify common characteristics permitting the actual elements of the offence to be understood sufficiently clearly. For this purpose, Panama suggested that a task of cardinal importance in the elaboration of an international convention against trafficking in children would be to classify the characteristics of such crime, for which purpose elements of a highly descriptive nature need to be adopted in order to achieve the greatest possible degree of legal certainty;

(c) Specific forms of the crime should be regarded as crimes against humanity, such as the following:

(i) Abduction of children;

(ii) Illegal adoption of children;

(iii) Sex tourism and child prostitution;

(iv) Sale of children for the purposes of work slavery;

(d) States should undertake the following national action and cooperation measures:

(i) Establishment of an information network permitting the exchange of all types of information for the purpose of preventing and combating trafficking in children;

(ii) Control measures in urban areas, these being the most exposed to the problem;

(iii) Specialized training for officers of the juvenile police department, prosecution service and judiciary; and refresher training for these institutions in effective statistical research strategies and controls applicable to the identification of suspected offenders.

26. Moreover, Panama was of the view that children who were victims of such offences should be entitled to compensation by the offender as well as specialized and long-term medical care, temporary places of refuge and foster homes. Monitoring bodies, in which members of the public would also serve, should be created with the mandate to assist in handling allegations of trafficking in children. Further, children who were victims of such crimes should not be subjected to judicial proceedings, but, on the contrary, should be placed in an appropriate therapeutic environment.

27. The Philippines stated that it fully supported an international agreement to prevent trafficking in children. As a legislative response to the Convention on the Rights of the Child, the Government of the Philippines, in 1993, promulgated an act, known as the Special Protection of Children against Abuse, Exploitation and Discrimination Act, which also provides for the protection of children against trafficking. Further, the Government required all unaccompanied minors travelling abroad to secure a clearance, and social workers were assigned in different international airports of the country to monitor the travel of children.

28. Poland reiterated its strong support for the elaboration of a convention on the subject, taking into account the worldwide spreading phenomenon of trafficking in children. Considering the fact that the phenomenon of smuggling children abroad, especially to developed countries, as well as Poland, was not diminishing, the Commission should define the scope of the new convention in relation to the International Convention for the Suppression of the Traffic in Women and Children of 30 September 1921, as amended by the Protocol signed at Lake Success, New York, on 12 November 1947,[2] and to the Convention on the Rights of the Child. With regard to the situation of trafficking in children in Poland, the Government reported that children were trafficked mainly for the following purposes:

(a) Trafficking in children across borders with the intent to carry out adoption abroad;

(b) Smuggling children abroad for the purpose of commercial sexual exploitation or work. This was often done by very well-organized groups, mostly with international character.

29. With regard to possible trafficking in children with the intent to obtain transplantation organs, no such cases had yet been confirmed by the Government. There were numerous instances of sexual exploitation of children within the country, including exploitation by foreigners. Although annually there were approximately 400 cases of sexual exploitation of children younger than 15 years of age in Poland, evidence of the phenomenon emerged much more frequently.

30. Slovenia reported that children had become an important object of abuse and income of adults through the selling of children for the purpose of abuse connected with, *inter alia*, prostitution, adoption, trade in human body parts, child labour and crime syndicates. In the view of the Government, the shaping of a convention on illegal trade in children was urgently necessary. A heightened awareness of the problems of abused children required not only endeavours for a uniform international view on the treatment of this problem and uniform action against it, but also a convention that could have an important preventive effect.

31. Spain was of the view that the trafficking in children appeared in multiple forms, and that the fight against such practices constituted one of the principal concerns of the international community. It was pointed out that there was currently no convention that dealt specifically with the sale of children and juveniles, and that could serve as a basis for efficient measures to counter the different forms of such exploitation, including civil and penal measures and a call for international cooperation. The Government regarded the elaboration of an optional

protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography as an important advancement towards the effective implementation of that Convention. To this end, it was important to avoid the duplication of international instruments and to ensure their compatibility in relation to one another. Priority should therefore be given to the elaboration of such an optional protocol. However, that would not hinder other measures from being developed to facilitate investigations on such matters as the exchange of information and cooperation between the judiciary and the police, which were necessary to prevent and combat the sale of children, in which international criminal organizations were frequently involved.

32. The Syrian Arab Republic suggested the deletion of the word "illicit" when considering measures to combat trafficking in children, as such trafficking was always illicit. Serious consideration should be given to the causes behind the expansion of such a phenomenon at the international level, and that measures to prevent it must be established. The issue of trafficking in children should be discussed in the context of transnational crime. The Government had no objection to considering the elaboration of an international convention on trafficking in children or the establishment of a model law on the prosecution and penalization of such offenders.

II. SURVEY OF THE EXTENT TO WHICH CHILDREN ARE PROTECTED FROM BECOMING VICTIMS OF TRAFFICKING

33. The Council, in its resolution 1996/26, requested the Secretary-General to conduct a survey, on the basis of existing international conventions, analysing the extent to which children are protected from becoming victims of international trafficking, taking into account both substantive and procedural aspects of providing such protection.

A. Background, scope and definitions

34. The scope of the following preliminary review of the extent to which children are protected from becoming victims of trafficking by international law excludes the following aspects of child trafficking:

(a) Sale and trafficking in children within the territory or jurisdiction of a State, involving no international ramifications;

(b) "Sex tourism", which does not involve the cross-border displacement of the child;

(c) Cross-border kidnapping for ransom, in order to exert pressure, or for similar ends;

(d) Situations of abduction, retention, illicit transfer and non-return of children abroad by a parent, as covered more especially by the Convention on the Rights of the Child, article 11, and the 1980 Hague Convention on the Civil Aspects of International Child Abduction.*

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*As explained by the Hague Conference on Private International Law in its "Checklist of issues to be considered at the third meeting of the Special Commission to review the Operation of the Hague Convention on the Civil Aspects of International Child Abduction" (The Hague, January 1997), this Convention aims only at regulating the "civil aspects" of international parental child "abduction" (see also paragraphs 46-47 below), "leaving criminal and extradition proceedings aside and providing solely for civil remedies ... The reference [in the title of the Hague Conference] to 'private law' has generally been felt to exclude criminal law which is normally classified under public law."

1. Definitions of sale and trafficking

Sale

35. "Sale of children" - or indeed of persons - is not defined in any international instrument. The Special Rapporteur of the Commission on Human Rights on the sale of children,* child prostitution and child pornography felt it necessary to define the concept, and did so as follows: "the transfer of parental authority over and/or physical custody of a child to another on a more or less permanent basis in exchange for financial or other reward or consideration" (E/CN.4/1996/100, para. 6).

36. The working group of the Commission on Human Rights on the question of a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography has so far been undecided about the need to define sale, child prostitution and child pornography. The working group nonetheless has a drafting committee on definitions that has provided the following tentative suggestion containing many elements - in square brackets - as yet to be agreed upon (E/CN.4/1996/101, annex, part 1):

> "'Sale of children' means the act of buying [and] [or] selling of a child [between any person [or institution] having custody or control over the child, and any other person [or institution] [for the purpose of] [for whatever purpose including] child prostitution [or] child pornography] [work of any kind, adoption for commercial purposes, criminal activities, trading in and transplantation of organs] for any form of compensation or reward.]"

37. Another definition has been submitted to the working group by the Russian Federation, and seconded by Mexico and the Philippines, as an alternative for consideration: "Sale of children means and includes all unlawful acts involved in the capture, acquisition, transfer, control or disposal of a child with purposes or intent of securing financial or other reward or consideration." It will be noted that the terms "capture", "acquisition" and "disposal" used here are taken from the 1926 Slavery Convention (see paragraphs 41-43 below), and are here applied solely to sale as opposed to trafficking. A further proposal submitted to the working group (E/CN.4/1996/101, para. 83) would simply require each State party to define sale of children in its domestic legislation.

38. The report of the third session of the working group, which took place from 3 to 14 February 1997, will be made available to the sixth session of the Commission.

Trafficking in children

39. The Inter-American Convention on International Trafficking in Minors, adopted at the Fifth Inter-American Specialized Conference on Private International Law, held at Mexico City in March 1994, defines international trafficking in minors as the "abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means".

40. The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others lists, in articles 1 and 2, those acts deemed to be covered within the terms of its title. Only one of those acts seems to relate to "trafficking in children", in this case specifically for the purpose of sexual exploitation, in that it provides for the punishment of any person who, under the terms of article 1, paragraph 1,

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*It is interesting to note that "sale" rather than "trafficking" or "sale and trafficking" was the term selected for this mandate. Existing international law more readily associates "trafficking" with sexual exploitation (see paragraph 40 below) and makes no mention of sale in this respect. Since the decision on the wording of this mandate was made, references to the relationship between sale and sexual exploitation have multiplied.

"procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person".

The concept of trafficking in children in international law

41. Since the sale of children and trafficking in children are often closely linked, as indicated by their respective definitions, it may be more useful to deal with them together rather than separately. This is all the more justified in that an important ramification of this frequent interrelationship is that successful efforts to combat one are likely to have an automatic effect on the other.

42. There is no explicit definition of "sale and trafficking" to be found in international texts, including the Convention on the Rights of the Child. However, the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, adopted by the Commission on Human Rights resolution 1992/74 and annexed thereto, asserts that "the trafficking in and sale of children ... constitute modern forms of slavery" - without defining any of these terms. Thus, it may be worthwhile at least to bear in mind indications contained in instruments dealing with that wider subject.

43. Aspects of the definition of "slavery" and the "slave trade" are contained in the 1926 Slavery Convention, article 1, which defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised". It further describes the slave trade as including "all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves" (see also paragraphs 35-38 above). The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, section IV,[3] contains definitions "for the purposes of" that Convention that mirror almost exactly those in the 1926 Slavery Convention.

2. Sale, trafficking in children and the issue of the consent of the child

44. It is sometimes asserted that, in certain circumstances and with regard to certain purposes at least, willingness to become the object of an act of sale or trafficking should qualify the seriousness of the offence, or even preclude prosecution of the perpetrator for sale and/or trafficking as such. In this regard, the following approaches adopted in international instruments should be borne in mind:

(a) The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, signed at The Hague on 29 May 1993, stipulates, in article 4, that contracting States should ensure, "having regard to the age and degree of maturity of the child", that he or she has freely consented to adoption "where such consent is required", implying that States should ideally require such consent as of an age, or on the basis of other criteria, that they set in national legislation. In this regard, the assumption would be that all other conditions relating to the envisaged adoption had been met, and that it is therefore otherwise legal and in conformity with the objects of the Convention;

(b) The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others provides for protection against exploitation in prostitution - with no age limit specified - regardless of whether or not consent has been given (see paragraph 40 above);

(c) The provisions of the Convention (No. 138) concerning Minimum Age for Admission to Employment, adopted on 26 June 1973 by the General Conference of the International Labour Organization (ILO) at its fifty-eighth session, imply that the obligation to respect minimum ages for

employment applies even if a child gives consent to being employed before reaching the minimum age in question.

45. In none of the above-mentioned cases is the consent of the child deemed to reduce or annul the exploitative nature of any illegal act related to the granting or consequences of that consent. The same logic would seem to be applicable in cases where parents, guardians or others acting *in loco parentis* are legally empowered to give consent on behalf of the child. This is moreover explicit in the case of intercountry adoption.

3. Terminology

Terms used for certain acts involving cross-border removal or retention of a child

46. The displacement or retention of a child abroad by means or for purposes that violate his or her rights is the subject of inconsistent terminology in international law. This can cause regrettable confusion over the exact meaning of one or other instrument or provision and its pertinence to any given phenomenon of this nature.

47. Thus, the act whereby one parent removes a child to another country, or retains the child in a country, against the will of the other parent and in violation of the child's right to contact with both, is referred to as "illicit transfer and non-return of children abroad" in the provisions of the Convention on the Rights of the Child principally designed to deal with this matter (see the Convention, article 11, paragraph 1). This identical act is termed "international child abduction" in the title of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, whereas the operative text of that same Convention refers to the "wrongful removal of a child" to a contracting State and the "wrongful retention of a child" in such a State, never to "abduction".* For the Convention on the Rights of the Child, however, "abduction" is a far wider concept and is placed alongside "sale and trafficking" (see article 35). Furthermore, as noted above (see paragraph 39 above), all three concepts of "abduction, removal or retention" are used in the Inter-American Convention on International Traffic in Minors in the context of its definition of "international traffic".

Use of terms relating to illegalities in the adoption process

48. The mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography, as set out by the Commission on Human Rights in its resolution 1990/68, endorsed by the Economic and Social Council in its decision 1990/240, includes explicit reference, as one aspect of "sale", to the phenomenon of "adoption of children for commercial purposes". This concept, however, covers only adoptions in which the adopters seek, or are persuaded or forced to seek, by those arranging the adoption, to exploit the child concerned in a "commercial" manner. The intention was to reflect the increasing "commercialization of adoptions". The reports of the Special Rapporteur to the Commission on Human Rights to date show that this component of the mandate has certainly been interpreted far more widely. It has been seen as encompassing all adoptions in which sale, trafficking or other analogous acts have at some stage been perpetrated, regardless of whether or not the adoption in question is for lawful ends.

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*The reasons for this discrepancy between title and text are explained by the Hague Conference on Private International Law in paragraph 2 of its "Checklist of issues to be considered at the third meeting of the Special Commission to review the Operation of the Hague Convention on the Civil Aspects of International Child Abduction" (The Hague, January 1997).

B. Purposes and forms of sale and trafficking in children

*1. Purposes of sale and trafficking in children at the international level**

49. The following three major purposes are widely ascribed to the phenomena of sale and trafficking at the international level:

(a) *Intercountry adoption*. This is probably the most fully documented area of concern. Considerable hard evidence exists in relation to sale and trafficking for adoption from Latin America and Asia to developed countries, from the former centrally planned economies of central and eastern Europe to western Europe and North America, as well as intraregionally in the developing world (for example, from Thailand to Malaysia);

(b) *Exploitation of labour (including for criminal purposes)*. Although somewhat less documented, this too is a practice carried out worldwide. Instances in the recent past include cases of young boys from Pakistan and other countries in the region being taken to Persian Gulf States as camel jockeys, from Haiti to the Dominican Republic for work on sugar-cane plantations (E/CN.4/1992/55, para. 86), from rural Ghana to urban centres in Côte d'Ivoire (E/CN.4/1994/84, para. 94) as workers, and as housemaids from African countries to western Asia and the United Kingdom of Great Britain and Northern Ireland and from Cambodia, China, Lao People's Democratic Republic and Myanmar to Thailand (E/CN.4/1994/84, para. 89). Less-documented evidence exists about the use of children under the age of penal responsibility in criminal activities. One example during the 1980s was the use of Romany children brought from the territory of the former Yugoslavia to Italy to carry out burglaries;

(c) *Sexual exploitation*. Historically, this and the slave trade were the spheres that first aroused concern over trafficking. In recent years, cross-border sale and trafficking to this end have been reported particularly within Asia (for example, from Burma to Thailand and from Nepal to India), but also from Asia and eastern Europe to western Europe (for example, to Belgium (E/CN.4/1994/84, para. 146), as well as within Africa (from Mozambique to South Africa (E/CN.4/1994/84, para. 165)).

50. Some of the reasons, proven or alleged, for the perpetration of such offences are the following:

(a) *Migration*. Cases of migration involving children are apparently not well documented, but the International Organisation for Migration discusses trafficking in migrants as a priority item;

(b) *Financial gain for third parties*. One example is the organized clandestine entry of children from Zaire to France, where they were placed with immigrant families, as "their" children, in order to enable the families to benefit from a higher level of allowances (E/CN.4/1994/84, para. 48);

(c) *Marriage*. Men from the Persian Gulf States offered money to marry young girls from India (E/CN.4/1994/84, para. 80) and parents of Yemeni origin in the United Kingdom sent their daughters to Yemen under false pretences with the intent of having them marry there, receiving financial reward;

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*In the context of the present preliminary review, it would be invidious to try to set out data and estimates regarding the scale and incidence of the phenomena of sale and trafficking in children. What is feasible, however, is to demonstrate the scope of the problem in reality by identifying the purposes for which these acts are carried out and the principal known ways in which they are effected. In this section, additional notes under each purpose of means are intended to be illustrative or explanatory, and in no way comprehensive. Again (see paragraphs 41-43 above), no distinction is made between "sale" and "trafficking".

(d) *Organ and tissue transplants*. Recurrent allegations and rumours as to trafficking and sale for this purpose have been made over the past 10 years, and the former Special Rapporteur on sale of children, child prostitution and child pornography noted that police in Nepal had informed him about the existence of such trafficking from that country to India (E/CN.4/1994/84, para. 100). The existence of organized and systematic operations has, however, never been clearly demonstrated, nor have adequate steps yet been taken to prove or disprove the allegations.

51. Finally, it should be emphasized that, now or in the future, there may be further purposes of cross-border trafficking and sale, such as medical experimentation or enrolment in armed groups.

2. Means by which international sale and trafficking in children are effected

Ways in which children are acquired

52. No list of means by which children are procured for intercountry removal could ever be considered complete; new methods are regularly invented and, in time, discovered. The following are some of the main ones currently known:

(a) Spontaneous offering of children for sale by a family, including offering, on a face-to-face basis, to conceive and give birth to a baby for the express reason of handing the child over after birth for a financial consideration;

(b) Direct approach, by an intermediary or prospective adopter, to a family identified as being in obvious extreme hardship with an offer to "buy" a child;

(c) False promises to a child and/or parents regarding employment opportunities abroad;

(d) Obtention of the consent of the child, parent or guardian without providing full information, under threat, by constraint, by manipulation or with promises of financial or other reward, for example, when single mothers are persuaded to give up their child at birth in return for medical care or in their own interests, or when biological parents are not told of the definitive severing of ties that an adoption entails etc.;

(e) Kidnapping and abduction by baby-minders from Thailand to Malaysia, or by such means as posing as child protection workers and ordering the removal of a child from family care (E/CN.4/1993/67, para. 50), effecting baby switches in nurseries, snatching children in markets etc.;

(f) Declaration of fictitious delivery in order to use the birth certificate at a later date for a genuine baby;

(g) Issuing, or ensuring the issuance of, a false declaration or certificate of death, so that the baby or child no longer has an identity and is adoptable by anyone;

(h) Abuse of *in vitro* fertilization and surrogacy services (E/CN.4/1993/67, para. 65);

(i) Networks operating from "orphanages", "baby-farms" and maternity clinics;

(j) Under cover of a legal adoption but for other purposes.

Means by which children are transferred across borders

53. The means by which children are illegally transferred across borders include the following:

(a) Falsification of documents concerning the child, by such means as entering false data into birth registers and therefore onto birth certificates, or the issuance of birth certificates from which parental names have been omitted, thus enabling them to be filled in later (E/CN.4/1993/67, para. 48);

(b) Falsification of documents enabling a person to have care of a child, for example, consent papers of the biological parents, or certificates of the prospective adopters' fitness to adopt;

(c) Falsification of documents of persons accompanying a child, enabling the child to travel with those persons, involving such documents as adoption orders;

(d) Obtention of any such documents in a genuine form but under false pretences, for illegal purposes and/or by payment or a similar act, for example, through bribery of judges, false declaration of paternity allowing the wife of the declarer to secure recognition as the mother, passports issued to adopted children without adequate checks (E/CN.4/1994/84, para. 53), or work permits for an activity other than that envisaged;

(e) Non-requirement of such documents, in any form or in proper form, by officials and authorities in court, at a consulate, upon emigration or immigration, whether or not bribed;

(f) Women legally or illegally crossing the border during pregnancy and giving birth while abroad, the child being adopted either in that country or elsewhere (E/CN.4/1994/84, para. 53, and E/CN.4/1993/67, para. 53);

(g) Travel via a third country to avoid border checks, for example, from Romania to the United Kingdom in transit, thence to Ireland, where checks are not made on travellers from the United Kingdom;

(h) Ensuring that the child poses as a refugee (E/CN.4/1994/84, para. 48);

(i) Smuggling and other forms of clandestine entry (E/CN.4/1994/84, para. 84).

C. Review of pertinent international texts

1. Indications of international concern: the context for international legal initiatives

54. Trafficking in persons has long been on the international agenda. The following examples, out of a multitude of possible examples, concerning various forums and at intervals of many years or decades, beginning in the late nineteenth century, can serve to illustrate the long-standing and continuing concern that surrounds the apparent inability of the international community to find adequate means of countering the phenomenon in question.

55. The General Acts of the Berlin Conference of 1885 and of the Brussels Conference of 1890 already affirmed the determination of signatory States to secure the suppression of trafficking in African slaves.[4] The League of Nations Advisory Commission for the Protection and Welfare of Children and Young People appointed a rapporteur who, in 1933, submitted a detailed report on trafficking in young women and girls in the east. The essential facts disclosed in the report were that there was an international trafficking in women and girls in the Near, Middle and Far East; that the number of women and girls involved in this trafficking was, in the aggregate, large; and that the bulk of the trafficking was trafficking in Asian women from one country to another. The report proposed, *inter alia*, the adoption of a more constructive policy in dealing with immigrants who were minors and who were victims of the trafficking, so that the vital interests of the child were not lost sight of in the effort to thwart the criminal.

56. Over 50 years later, in the Nairobi Forward-looking Strategies for the Advancement of Women, adopted by the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, held at Nairobi from 15 to 26 July 1985, it was noted that "urgent consideration should be given to the improvement of international measures to combat trafficking in women for the purposes of prostitution".[5]

57. In 1992, the Special Rapporteur on human rights and youth of the Subcommission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, in his report (E/CN.4/Sub.2/1992/36), noted the following:

(a) In paragraph 116: in some countries of Asia and Latin America, "forced prostitution and trafficking in young women for the purposes of prostitution have become a highly profitable business, not only at the national but even at the international level";

(b) In paragraph 118: "urgent consideration should be given to the improvement of national and international measures to combat trafficking in young women for the purposes of prostitution";

(c) In paragraph 148: "There are many contemporary manifestations of slavery-like practices, including ... traffick in and exploitation of youth labour, ... traffic in young migrant workers ...";

(d) In paragraph 149: "Of concern are also incidents involving the illegal transportation of young workers from developing countries to some developed ones in conditions akin to slavery ... . This raises the problem of the exploitation of youth labour through illicit and clandestine trafficking."

2. Early twentieth-century legislative efforts

58. International concern about selling, trafficking and associated phenomena more or less directly affecting children, including slavery, financial gain from the prostitution of others and illegal adoption, has been reflected in a number of treaties drawn up since the beginning of the century, within the framework of the global development of international human rights law.

59. The main treaties adopted on such issues prior to the founding of the United Nations were as follows:

(a) The International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic (amended by the Protocol approved by the General Assembly on 3 December 1948);

(b) The International Convention of 4 May 1910 for the Suppression of the White Slave Traffic (amended by the Protocol of 3 December 1948);

(c) The Convention of Saint-Germain-en-Laye of 1919 (to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea);

(d) The International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children (amended by the Protocol signed at Lake Success, New York, on 12 November 1947);

(e) The 1926 Slavery Convention (amended by the Protocol approved by General Assembly resolution 794 (VIII) of 23 October 1953);

(f) The International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age (amended by the Protocol of 20 October 1947).

60. The 1919 Convention of Saint-Germain-en-Laye is no longer valid. The others, bar the 1926 Slavery Convention, have been consolidated in a subsequent United Nations treaty (see paragraphs 62-63 below); the 1926 treaty is still in force.

*3. International legal texts and recommendations with current effect or influence**

Prohibition and prevention: international treaties

Slavery Convention

61. The 1926 Slavery Convention and its Protocol of 1953 had been ratified by a total of 91 States - and the Convention alone by an additional 12 - as of 30 June 1996. The main interest of the treaty in the context of the present review is that, in relation to the acts specified in its article 1 (see paragraphs 41-43 above), it recognizes the importance of international cooperation, requiring the contracting parties (under the terms of article 4) to "give to one another every assistance with the object of securing the abolition of slavery and the slave trade".

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

62. The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others had been ratified by 71 States as of 31 January 1997. It was designed to consolidate the above-mentioned treaties of 1904, 1910, 1921 and 1933, which were in force at the time of its adoption, and which thereby became obsolete. It obliges States parties, *inter alia*, to punish any person who, to gratify the passions of another, "procures, entices or leads away, for purposes of prostitution, another person", even with the latter's consent. Under the treaty, such offences are to be regarded as extraditable or, in States where extradition is not permitted, nationals who have returned to their own State after the commission abroad of any such offence are to be prosecuted in and punished by the courts of their own State.

63. In addition to specifying extradition procedures, the 1949 Convention also sets out detailed obligations designed to combat international trafficking in persons linked to prostitution. These include: (under article 14) the establishment or maintenance of "a service charged with the coordination and centralization of the results of the investigation of offences"; (under article 17) the adoption or maintenance of measures "to check the traffic in persons of either sex for the purpose of prostitution" upon immigration and emigration; and (under article 20) "measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution" (see paragraph 78 below).

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

64. The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery had been ratified by 115 States as of 30 June 1996. It was designed to complement, not to replace, the 1926 Slavery Convention. For the purposes of the present report, the most pertinent provision of the Supplementary Convention is article 1, under which States parties are to "take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete

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*This section is divided into the following two parts: questions relating more especially to the prohibition and prevention of trafficking and sale; and questions relating to assistance to, and the repatriation of, children who are victims of such crimes. The subsections are further divided into international and regional texts of a binding and non-binding nature.

abolition or abandonment of", *inter alia,* "any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour".

Convention on the Elimination of All Forms of Discrimination against Women

65. The 1979 Convention on the Elimination of All Forms of Discrimination against Women, in force since 1981, had been ratified by 155 States as of 31 January 1997. Under the terms of article 6, States parties are to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women".

Convention on the Rights of the Child of 1989

66. The Convention on the Rights of the Child has been almost universally ratified, with 190 States parties as of 24 February 1997. Under the terms of article 35, States parties are to take "all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form". It is worth noting that this key provision in the Convention relating to the subject of the present review has not been the subject of a reservation by any of the States parties. With specific reference to intercountry adoptions, article 21 stipulates that States parties should "take all appropriate measures to ensure that ... the placement does not result in improper financial gain for those involved in it". The same article also requires that, as regards intercountry adoption, "safeguards and standards equivalent to those existing in the case of national adoption" should be applied, and calls on States parties to "promote, where appropriate, the objectives of the present article by concluding ... multilateral arrangements or agreements".

67. Other provisions are also directly or indirectly relevant to the overall question of sale and trafficking in children, for example, those regarding parental responsibility, the best interests of the child and identity. (See other pertinent provisions of this treaty in paragraph 79 below.)

Convention on Protection of Children and Cooperation in respect of Intercountry Adoption

68. One of the objects of the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which had been ratified by 14 States as of 31 January 1997, is "to establish a system of cooperation amongst Contracting States to ensure that ... safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children" (article 1), thus ensuring that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law. On the basis of article 21 of the Convention on the Rights of the Child, article 8 of the 1993 Hague Convention specifies that: "Central Authorities [of Contracting States] shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention." The principle underlying this obligation is set out in article 32, paragraph 1: "No one shall derive improper financial or other gain from an activity related to an intercountry adoption." The scope of the term "improper financial or other gain" is implicitly specified in article 32, paragraphs 2 and 3, according to which: "only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid"; and "the directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered". The 1993 Hague Convention provides, in article 33, for the following procedure in cases where its provisions are, or are deemed likely to be, violated: "A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. The Central Authority shall be responsible for ensuring that appropriate measures are taken." (See other provisions of this treaty in paragraph 80 below.)

Prohibition and prevention: international non-binding texts

Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally

69. The 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly resolution 41/85, annex) once again illustrates the special concern evoked in the international community with regard to the danger of intercountry adoptions resulting from the sale or trafficking in children. In its article 18, Governments are enjoined to "establish policy, legislation and effective supervision for the protection of children involved in intercountry adoption". Article 19 builds on this principle by stipulating that "policies should be established and laws enacted, where necessary, for the prohibition of abduction and of any other act for illicit placement of children"; and article 20 states that "in no case should the placement result in improper financial gain for those involved in it".

Programmes of action

70. Programmes of action relevant to the issue at hand have been adopted by the Commission on Human Rights regarding the prevention of the sale of children, child prostitution and child pornography (1992), the elimination of the exploitation of child labour (1993) and the prevention of trafficking in persons and the exploitation of the prostitution of others (1996). These programmes recommend a variety of measures to be taken, in particular at the national level, ranging from consciousness-raising to improved legislation and enforcement, as well as advocating intensified international cooperation.

Prohibition and prevention: regional treaties

European Convention on the Adoption of Children

71. The 1967 European Convention on the Adoption of Children requires contracting parties (under the terms of article 15) to make provision for the prohibition of "any improper financial advantage arising from a child being given up for adoption".

African Charter on Human and Peoples' Rights

72. The 1981 African Charter on Human and Peoples' Rights, which entered into force in 1986, had been ratified by 50 States as of 1 January 1996. It prohibits, in article 5, "all forms of exploitation and degradation", including in particular slavery and the slave trade.

73. In addition, article 18, paragraph 3, obliges States parties to "ensure the elimination of every discrimination against women and ... the protection of the rights of the woman and the child as stipulated in international declarations and conventions". The implication is that States that are also parties to the Convention on the Rights of the Child would be obliged to implement the provisions of article 35 and other provisions of that Convention relevant to sale and trafficking as part of their obligations under the 1981 African Charter.

African Charter on the Rights and Welfare of the Child

74. The 1990 African Charter on the Rights and Welfare of the Child, having been ratified to date by only six States members of the Organization of African Unity, has not yet entered into force (15 ratifications being required for that purpose). It contains a provision on the sale and trafficking in children (article XXIX), which is essentially similar in effect to its counterpart in the Convention on the Rights of the Child, but does

additionally specify that States are to combat sale and trafficking "by any person including parents or legal guardians of the child".

American Convention on Human Rights

75. The 1969 American Convention on Human Rights entered into force in 1978, and as of 1 January 1996 had been ratified by 25 States. It specifies, in article 6, that "no one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women".

Prohibition and prevention: regional non-binding texts

Council of Europe Parliamentary Assembly recommendation 1065

76. By its recommendation 1065 of 6 October 1987, the Council of Europe Parliamentary Assembly recommended that the European Committee on Crime Problems should study trafficking in children, and that a code of conduct and guidelines be drafted for individuals and agencies proposing to undertake the movement of unaccompanied children between States.

Recommendation R(91)11 of the Committee of Ministers to member States of the Council of Europe

77. Recommendation R(91)11 of the Committee of Ministers to member States of the Council of Europe, made in 1991 under the Statute of the Council of Europe, article 15 (b), is worth highlighting because it emanates from an organ of the Council of Europe and specifically addresses "sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults". The recommended measures are of special interest in that they are sufficiently concrete and detailed to provide insight into specific concerns. Thus, as regards the trafficking in children and young adults, it recommends that governments should review their legislation and practice with a view to introducing, if necessary, and implementing the following measures (see paragraph 85 below):

(a) Supervising the activities of artistic, marriage and adoption agencies in order to control the movement within, or between countries, of children and young adults, to prevent the possibility that they will be led into prostitution or other forms of sexual exploitation;

(b) Increasing surveillance by immigration authorities and frontier police in order to ensure that travel abroad by children, especially those not accompanied by their parents or their guardian, is not related to trafficking in human beings.

Assistance and return: international treaties

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

78. In addition to its provisions on "prohibition" (see paragraphs 62-63 above), the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others also stipulates, in article 16, that States parties "agree to take or to encourage ... measures for ... the rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present Convention". Subsequent provisions (articles 18 and 19) require States parties "so far as possible" to repatriate aliens who are prostitutes "who desire to be repatriated or who may be claimed by persons exercising authority over them or whose expulsion is ordered in conformity with the law" and "pending the completion of arrangements for the

repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance".

Convention on the Rights of the Child

79. The Convention on the Rights of the Child, article 39, requires States parties to "take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of ... any form of ... exploitation ... in an environment which fosters the health, self-respect and dignity of the child". It may be recalled that this Convention applies to each child within the jurisdiction of the States parties without discrimination of any kind (article 2, paragraph 1), and that obligations deriving from the treaty therefore clearly exist in the case of children who are victims of trafficking and sale in the country to which they are taken.

Convention on Protection of Children and Cooperation in respect of Intercountry Adoption

80. The 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption enables contracting States, under the terms of article 24, to refuse recognition of adoption if, and only if, it is "manifestly contrary to its public policy, taking into account the best interests of the child". This enables a State to refuse recognition if trafficking or sale is proven, but that State may nonetheless choose to allow recognition if this is deemed to be in the best interests of the child, which is not infrequently the case. Under article 21 of the Convention, the receiving State may take steps to withdraw a child from the care of prospective adoptive parents if the planned adoption is deemed contrary to the best interests of the child, and to take measures for its care and protection that, in the last resort, may include repatriation. Again, sale or trafficking, if proven, could constitute grounds for such withdrawal and, possibly, repatriation.

Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of the Child

81. The 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of the Child, is the new private law treaty, not yet ratified by any State as of 31 January 1997, resulting from the thorough revision of the 1961 Hague Convention on the Protection of Minors. Unlike the latter, the 1996 Convention provides not only for recognition, but also for enforcement, of measures taken; of even more importance is the fact that it sets up a framework for international cooperation through central authorities to be designated by each contracting State (similar to the system for the 1993 Hague Convention). The preamble to the 1996 Hague Convention refers to "the need to improve the protection of children in international situations" and "the importance of international cooperation for the protection of children". Among its objects, as specified in article 1, are "to determine the State whose authorities have jurisdiction to take measures directed to the protection ... of the child", "to provide for the recognition and enforcement of such measures in all Contracting States", and "to establish such cooperation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention".

82. The aim, then, is to ensure protection for the child in whatever contracting State he or she may be, and for reasons that include cross-border transfer in the context of sale or trafficking. In such cases, the applicable provision will be article 11, paragraph 1, which specifies that "in all cases of urgency, the authorities of any Contracting State in whose territory the child ... is present have jurisdiction to take any necessary measures of protection". Implementation measures include the obligation of the central authority of a contracting State to "take all appropriate steps" to "provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State" (article 31 (c)).

Assistance and return: international non-binding texts

83. No significant non-binding texts have been identified on this question in the course of preparing the present preliminary review.

Assistance and return: regional treaties

Inter-American Convention on International Trafficking in Minors

84. The 1994 Inter-American Convention on International Trafficking in Minors although emanating from a "private law" forum, is designed to regulate both civil and penal aspects of the international trafficking in minors through minimum domestic legislative measures and international cooperation, including that required for securing, where appropriate, the revocation of adoption and care orders regarding children who are victims of trafficking, as well as the repatriation of the minor. It covers "any human being below the age of eighteen" who is the victim of "abduction, removal or retention, or attempted abduction, removal or retention ... for unlawful purposes or by unlawful means". The term "unlawful purposes" is then defined to include "prostitution, sexual exploitation, servitude or any other purpose unlawful in either the State of the minor's habitual residence or the State Party where the minor is located". It is as yet too early to foresee the impact of this treaty, the ratification of which will, moreover, be limited to States members of the Organization of American States.

Assistance and return: regional non-binding texts

Recommendation R(91)11 of the Committee of Ministers to member States of the Council of Europe

85. The Committee of Ministers recommends that Governments, *inter alia* (see paragraph 77 above), "set up facilities and support those existing, in order to protect and assist the victims of traffic in children and young adults".

D. Preliminary observations on the basis of the review

1. Is an additional international treaty required?

86. Obligations and recommended measures on questions related to the sale and trafficking in children are to be found in a wide range of instruments of public and private law, of an international and regional, binding and non-binding, general and focused nature. Their disparate and selective nature, however, in addition to the fact that they were drawn up at different times over many years, makes them ineffective as a "body of law" on the issues in question.

87. Certain developments in private international law have significantly advanced efforts to protect the rights of the child in specific spheres, notably by setting in place international systems and structures of cooperation facilitating implementation of the provisions of the Convention on the Rights of the Child. As regards prevention and prohibition of sale and trafficking, progress has been made particularly in the context of intercountry adoptions regulated by the 1993 Hague Convention. It is widely considered that, in doing so, however, the 1993 Hague Convention goes somewhat beyond the normal bounds of private international law. Interestingly, the content of the subsequent 1996 Hague Convention reflects a return to a stricter interpretation of private law, possibly in part at least as a reaction to that trend. The 1994 Inter-American Convention, however, diverges even further from "pure" private law, incorporating provisions on penal matters, but it has yet to come into force. It is unlikely that private law treaties can cover all necessary aspects, or secure the global support required, as regards combating trafficking and sale as a whole. As regards assistance to victims and their

repatriation, the 1996 Hague Convention puts in place structures and channels and determines jurisdiction in relation to affected children, regardless of the reason for their being outside their country of habitual residence.

88. Except for the Convention on the Rights of the Child, international public law instruments dealing in any significant way with trafficking and sale lack treaty bodies to oversee compliance. The Working Group on Contemporary Forms of Slavery of the Subcommission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights has been given global responsibility for oversight in relation to the 1926 and 1956 Conventions, and some attempts are being made to revitalize those treaties, but the absence of fully-fledged treaty bodies undoubtedly weakens their impact.

89. At the fifty-second session of the Commission on Human Rights, the Committee on the Rights of the Child submitted a paper to the working group on the question of a draft optional protocol to the convention on the Rights of the Child. In its paper the Committee noted that the issues of sale and trafficking in children, child prostitution and child pornography deserved special attention within the United Nations system of organizations. Mention could be made in this regard to ILO or to the activities developed by the United Nations Children's Fund within the framework of the implementation of the World Declaration on the Survival, Protection and Development of Children, and the Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s, adopted by the World Summit for Children on 30 September 1990 (A/45/625, annex). At the same time, in the area of crime prevention and criminal justice, important steps had also been taken. In fact, the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders had called on States to adopt the necessary measures aimed at the prevention, protection and rehabilitation of children who were the victims of any form of violence, including sexual violence and sexual exploitation. It had further invited the Commission on Crime Prevention and Criminal Justice to consider drafting an international convention on the trafficking in children that could embody the elements necessary to combat this form of transnational organized crime effectively. As a result, the Commission, at its fourth session, had requested the Secretary-General to initiate the process of requesting the views of Member States on the elaboration of such an international convention. An important standard-setting activity was therefore already under way within the United Nations system in that area.

90. The paper submitted by the Committee was of considerable significance. It underlined in particular the need to implement existing instruments, including plans of action, before developing additional binding texts. Despite this, it qualified the possible drafting of an international convention on trafficking in children as an important standard-setting activity under way within the United Nations system.

91. In summary, from the results of the survey, it emerges that:

(a) The obligations under the Convention on the Rights of the Child, and particularly its articles 35 and 39, are to be looked upon more especially as constituting requirements to reinforce international cooperation in this sphere rather than as sufficient in themselves;

(b) The 1993 Hague Convention sets out adequate procedural provisions as regards intercountry adoption and could potentially be ratified by all States, but basically only by those States from which and to which intercountry adoption takes place;

(c) Public law treaties do not set out adequate procedural provisions for assistance to and repatriation of victims of sale and trafficking, with the possible exception of victims of prostitution;

(d) There are major gaps in the coverage of the overall phenomena of sale and trafficking in international treaties, essentially because they each tend to cover either sale only or trafficking only, and focus more

especially on sexual exploitation - and on the apparent purpose of the acts involved - rather than on combating the acts per se, whatever the ostensible reason for carrying them out.

92. For an international law treaty specifically dealing with the trafficking and sale in children, the quasi-universal ratification of the Convention on the Rights of the Child, with no reservations to article 35, would seem to represent a very sound basis for wide acceptance.

93. Should an initiative to draw up a binding text be pursued, the following would seem to be among the main issues to be taken into account:

(a) *Scope*. Both sale and trafficking need to be covered, since they so often go side by side. Account has to be taken of all aspects of these phenomena, from prohibition and prevention to prosecution, assistance, repatriation and international cooperation;

(b) *Definition of terms*. Sale and trafficking should be defined in a generic way for the purposes of any such treaty. Thus, the generic elements of the international sale of children might be summarized as the physical transfer, for financial or other reward, of a child by one party having legal or de facto custody to another party who removes the child to another country, or who is in another country. The generic elements of international trafficking in children might be summarized - in line with the 1994 Inter-American Convention - as effecting or securing the cross-border displacement of a child by way of illegal means and/or for illegal purposes. It is vital that ambiguity should be avoided. The definitions should preclude, for example, repetition of the case of a couple in a State of the European Community who, convicted of buying a child in a State of eastern Europe and then trying to smuggle her across the border, were subsequently pardoned because "they were not fundamentally guilty" (that is, the ends - adoption - were deemed to be legal even if the means were clearly illegal, and this "justified" the act);

(c) *Formulation*. This should be broad enough to take account of all current and potential situations (purposes of sale and trafficking and the means by which they are effected), the wide range of actors that may be involved (either as perpetrators or with an enforcement role) and the fact that various types of networks exist;

(d) *Consent*. It will be very important for any international text to recall the fact that sale and trafficking in children are deemed to be committed regardless of whether or not consent has been given by, or obtained from, the child, parents, guardians or others legally responsible (see paragraphs 44-45 above);

(e) *Other obligations*. Any such text should provide for States parties to act in accordance with their obligations under other instruments, for example, the Hague conventions, where appropriate.

94. It will be recalled that the General Assembly, in its resolution 41/120, invited Member States and United Nations bodies to bear in mind that new instruments to be elaborated should be of fundamental character and derive from the inherent dignity and worth of the human person, and that the new instrument should attract broad international support.

2. Elements of a possible convention against international trafficking in children

95. The views expressed by Governments concerning the elements of a possible draft convention against trafficking in children are summarized below.

Preamble or introduction

96. In the view of Mexico, the draft convention should have a preamble or introduction that reaffirms the commitments assumed by the States parties in controlling international trafficking in children; a definition and an indication of the scope of application and the rights that are protected; a statement of the duties of the States parties and the criminal aspects; and general provisions and procedures for the exchange of information on the matter. New Zealand was of the view that the focus of the convention should be trafficking in children regardless of its purpose. Although most trafficking currently appears to be for the purpose of prostitution, child labour or commercial adoption, situations may occur which do not relate to those particular activities. The scope of the convention should be wide enough to include all those who participate in the activity in question, including those who instigate and abet such activity.

Definitions of the offence

97. Guatemala stated that a draft convention should define the offence, describing the ingredients constituting it as well as the offences of attempted trafficking in children, aiding and abetting and conspiracy. In the view of Panama, a task of cardinal importance would be to classify the characteristics of such crime, for which purpose elements of a highly descriptive nature need to be adopted in order to achieve the greatest possible degree of legal certainty. Specific forms of the crime, such as abduction of children, illegal adoption of children, sex tourism and child prostitution and the sale of children for the purposes of work slavery, should be defined by the convention and should be regarded as crimes against humanity.

Children as victims of trafficking and the needs of the child

98. Mexico considered that the illegal trade in children and the sexual abuse of children very often had their origin within the family. It was therefore advisable, internationally, to give full recognition to the legal validity of the accusations made by children who are the victims of sexual offences, without the need for acknowledgement by the guardian, as is currently the case. New Zealand stated that the needs of children involved should be recognized and addressed within the framework of the convention as far as possible. In this context, it is important to recognize linkages with other conventions that may be relevant. The 1961 Hague Convention on the Protection of Minors, which is currently being revised, may have some applicability, outside the criminal context, when the issue of the future of the child is being considered. It is also important to specifically link the convention to the principles set forth in the Convention on the Rights of the Child and see that any measures are consistent with it.

Provisions for punishments

99. Mexico felt that it was necessary to increase punishments for the perpetrators of such offences, to safeguard the interests of the victim. Guatemala suggested that a possible convention may further provide that acts constituting the offence should be brought to the attention of an international criminal court whose jurisdiction is recognized by the parties.

Provisions for commitments by States parties

100. Guatemala suggested that a possible convention should establish that the contracting parties undertake to pass or enact laws that ensure the effective implementation of the provisions of the convention, and that States should establish penal sanctions for the punishment of offenders in conformity with their constitutions. It should further provide for the extradition of persons charged with international trafficking in children and, in cases where extradition is not admissible under the provisions of their constitutions, it should stipulate that States should undertake, through the competent courts, to prosecute in their own territory persons charged with

such offences. New Zealand suggested that a possible convention should make provision for the cooperation of enforcement authorities and extradition where appropriate. To ensure the effectiveness of the convention, there should be provisions to encourage the maximum cooperation between enforcement authorities in different jurisdictions, given that the crime involved is often a transnational crime. Panama specified the possible commitment of States parties to the convention as follows: States should be obliged to revise their national legislations and procedural and penal regulations to permit the criminal prosecution of offences classified generically as trafficking in children. States should harmonize their legislations regarding the establishment of this criminal offence in such a way as to identify common characteristics permitting the actual elements of the offence to be understood sufficiently clearly. For this purpose, Panama suggested that States should undertake the following national action and cooperation measures:

(a) Establishment of an information network permitting the exchange of all types of information for the purpose of preventing and combating trafficking in children;

(b) Control measures in urban areas, these being the most exposed to the problem;

(c) Specialized training for officers of the juvenile police department, prosecution service and judiciary. Refresher training for these institutions in effective statistical research strategies and controls applicable to the identification of suspected offenders.

III. CONCLUSION AND PROPOSALS FOR ACTION BY THE COMMISSION

101. The present report is the second submitted by the Secretary-General on the views of Member States on the elaboration of a convention against trafficking in children. Taking the information previously received from Member States into account, as reflected in the report of the Secretary-General, submitted to the Commission at its fifth session, on children as victims and perpetrators of crime (E/CN.15/1996/10), a total of 33 States has provided the Secretariat with their views, namely: Argentina, Australia, Austria, Chad, Chile, Cuba, Cyprus, Estonia, Finland, Germany, Greece, Guatemala, Holy See, Iceland, Israel, Italy, Japan, Jordan, Kuwait, Luxembourg, Mexico, New Zealand, Niger, Norway, Panama, Philippines, Poland, Qatar, Slovenia, Spain, Syrian Arab Republic, Tunisia and Turkey.

102. All States, with the exception of Japan and Kuwait, seem to favour the elaboration of such a convention, provided that the results of the inter-sessional open-ended working group of the Commission on Human Rights for the elaboration of an optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography are adequately taken into account, and that possible overlaps with other relevant instruments are avoided. Some States explained the reasons for their views in detail, and made concrete suggestions on the possible content of such a convention. Japan raised some issues of concern regarding duplication with other international instruments. Kuwait suggested that perhaps the international criminal court, to be established under General Assembly resolution 50/46, was the best authority that could be entrusted with the mandate to consider such crimes.

103. On the basis of the information summarized in both the present report as well as the previous one submitted to the Commission, and drawing on the results of the survey as contained in paragraphs 86-94 above, the Commission may feel that there is a need, in principle, to elaborate a convention to combat trafficking in children.

104. Should the Commission decide that there is such a need, it may wish to decide on appropriate ways and means of developing a draft text, in particular:

(a) By establishing an open-ended inter-sessional working group of the Commission responsible for elaborating elements of a possible draft convention against trafficking in children, which would report on the results of its work to the Commission at its seventh session;

(b) Or by establishing a pre-sessional working group with the task of identifying the scope and main content of a possible convention against trafficking in children;

(c) Or by requesting the Secretariat to organize a meeting of experts with a view to developing a set of specific proposals as a basis for discussion by the Commission at its seventh session, drawing on key issues to be determined by the Commission;

(d) And on the basis of the outcome of the discussions of the Commission at its sixth session, requesting the Secretariat to seek the views of Member States on the possible elements of a convention (as contained in paragraphs 95-100 above), as well as on the main issues to be covered, and further requesting Member States to provide data on the extent to which children become victims of trans-border trafficking in practice.

Notes

[1]United States Immigration and Naturalization Service, *OUR Review*, January/February and May/June 1990.

[2]United Nations, *Treaty Series*, vol. 53, No. 771.

[3]Ibid., vol. 266, No. 3822.

[4]W. Angel, ed., *The International Law of Youth Rights* (Dordrecht Martinus Nijhoff, 1995), p. 5.

[5]*Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, 15-26 July 1985* (United Nations publication, Sales No. E.85.IV.10), chap. I, sect. A, para. 291.